



**American Chemistry Council
Public Comments
on
“Requirements for Submissions Requesting Exclusions from the Remedies Instituted in
Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting
Imports of Aluminum into the United States; and the Filing of Objections to Submitted
Exclusion Requests for Steel and Aluminum”**

Docket Numbers BIS-2018-0002 and BIS 2018-006

May 18, 2018

The American Chemistry Council (ACC) appreciates the opportunity to provide public comment on the Interim Final Rule (‘Interim Regulations’) amending the National Security Industrial Base Regulations. These amendments set forward the process for how U.S. companies may submit requests for exclusions taken by the President under Presidential Proclamations 9704 and 9705 on March 8, 2018, which place additional tariffs on certain imports of steel and aluminum pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (Section 232). ACC’s public comments will describe the real world impacts of the Section 232 tariffs and offer recommendations for improving the Interim Final Rule.

ACC’s Views on the Section 232 Tariff Action

ACC remains firmly opposed to the Administration's decision to apply global tariffs of 25 percent for steel products and 10 percent for aluminum, under Section 232. These tariffs will have a direct effect on the chemical industry, its \$194 billion of planned investments in job-creating chemical plants in the United States, and its increasing export prowess. Today, American chemical manufacturers produce 15 percent of the world’s chemicals, and account for 14 percent of all U.S. exports, amounting to \$181 billion in 2017. The U.S. has a large and growing trade surplus in industrial chemicals of \$33 billion in 2017. Given the competitive advantage that has been created by the American shale gas revolution, that surplus in chemicals is estimated to grow to \$73 billion by 2022.

History has shown that the imposition of tariffs is counterproductive. These taxes on imports often do little more than invite retaliation by trading partners, which ultimately undermines their stated intent. Therefore, ACC does not believe as a general matter that tariffs are consistent with the goals of U.S. economic growth, innovation and job creation. In this case, the Administration’s Section 232 tariffs are intended to protect struggling domestic industries that have failed to achieve profitability in an increasingly global market. However, in an effort to prop up challenged industries, one of America’s most competitive and most successful industries – chemicals – will suffer. These tariffs will increase the costs and decrease the availability of the necessary equipment and inputs for building and operating chemicals plants. They will increase



the time it takes to source needed material and therefore delay or halt the construction of chemicals plants in the United States. Proposed U.S. tariffs under Section 301 of the Trade Act of 1974 also have incited retaliation from China, thereby potentially closing the increasingly important Chinese market for U.S. chemical manufacturers. China has also retaliated against the Section 232 tariffs on a wide range of goods, including agricultural products. The European Union has threatened retaliation against the Section 232 tariffs totaling €6.4 billion worth in goods, if it does not reach an exemption agreement with the United States. These tariffs would impact U.S. exports due to costs that might not be absorbed by trading partners, therefore, indirectly impacting the chemical industry.

Though the chemical industry has been a significant driver of economic growth and job creation in the United States, U.S. tariff actions and China's retaliation can undermine that promise. We urge you and the President to revoke these tariffs as soon as possible.

Impacts of the Tariffs on the Business of Chemistry in the United States

ACC estimates a typical 1.5m tonne/year cracker in the United States uses about 18,500 short tons of steel and 1,150 short tons of aluminium. A 25 percent increase in steel costs would increase U.S. chemical project construction costs by 0.5 percent. For one ACC member company, roughly 20 percent of the cost of its \$6 billion in its latest U.S. Gulf Coast investments was related to steel. These cost increases may cause some companies to reconsider their projects and encourage them to consider building plants overseas, weakening the U.S. chemical industry's export competitiveness. Structural steel and pipe and tubing are large components of chemical plants, as is rebar and piling. Steel-related costs also include carbon steel plate; pipe and tubing; sheets and strip and other direct products used in heat exchangers; distillation columns, reactors, and other pressure vessels and tanks; and process machinery.

Moreover, as a result of the tariff action under Section 232 of the Trade Expansion Act of 1962, the United States is already applying tariffs of 25 percent on top of existing anti-dumping and countervailing duties for many steel products coming from China. An additional 25 percent tariff as a result of possible Section 301 tariff action will exacerbate the price impacts. Companies in the chemicals sector and companies consuming chemicals to manufacture their products or produce their agricultural goods will bear the brunt of these higher prices and costs.

As an example of the chilling economic effect of these tariffs, higher costs of steel inputs will undermine new plant construction and investments in the United States. These new investments are long-term commitments to U.S. manufacturing, establishing high-technology plants and high-value-add workforce opportunities that will benefit America for decades – once they are built. A higher cost of steel inputs fundamentally changes the value proposition of new construction and directly discourages future investments.

ACC's views on the 'agreements' with U.S. trading partners

ACC is also concerned that the exemption agreements with trading partners will result in severe supply constraints, price distortions, and diminished exports of chemicals from the United States to the rest of the world. For example, the absolute and quarterly quotas for different categories of



steel products coming from South Korea, as detailed in the May 1 Customs and Border Protection (CBP) Bulletin on quotas¹ (QB 18-118 Steel Mill Articles (AMENDED)), are already blocking trade. As of May 14, CBP is reporting² that the quarterly quota for nine categories is already filled, since the system backdates the initiation of the quota to January 1. This means that consumers of steel in the United States will face significant supply constraints if they cannot acquire steel for a number of quarters if one or more quarterly quotas are filled, or if a yearly quota is filled. Furthermore, since these are absolute quotas, there is no opportunity for importers to pay the tariff and import the product if the quota is filled, which constrains supply even further. If CBP is to apply this quota system across a range of trading partners, supply constraints and associated operational costs will only increase. U.S. steel users will be assigning resources to secure supply, as opposed to manufacturing and building plants. It is doubtful that domestic steel producers will be able to meet users demand with supply in sufficient quality and quantity. In short, a broadly administered quota system will not be conducive to promoting job-creating manufacturing and investment in the United States.

Specific impacts of the tariffs and quotas on steel and aluminum imports to U.S. chemical manufacturers

In addition to the increased capital expenditure on new chemical project construction, these tariffs will also increase maintenance costs for existing facilities. Given the tariffs' impact on purchases of foreign sourced pipe, structural steel, and domestic fixed equipment, one ACC member company estimates the tariffs will result in \$15 million/year of incremental cost for maintenance, turnarounds and plant capital activities vs 2017 purchases.

Another ACC member is already experiencing difficulties with the South Korea steel quotas administered by CBP. This member had purchased structural steel products for the multi-billion dollar chemicals plant it is planning to construct in the United States. Unfortunately, this company now cannot get this product shipped from the Port of Busan to the United States. Warehousing the product in Busan and searching for U.S. sources of supply is increasing costs and man-hours for this company. If this issue continues and delays the company's project, it estimates that startup and production could also be delayed, resulting in operational losses of \$3 million for every day final start up and operations are pushed back.

ACC's Recommendations for Improving the Interim Final Rule

We believe the following recommendations would improve the Interim Final Rule by providing an efficient, fair, and non-discriminatory process for companies and associations to request the exclusion of products from the application of the tariffs:

1. **The Interim Final Rule should treat industry associations as 'parties' that can submit requests for exclusions on behalf of their members.** These tariffs are impacting millions of U.S. companies, particularly small and medium-sized enterprises that use steel and aluminum. Many of them do not have the financial or legal resources to file exclusion

¹ <https://www.cbp.gov/trade/quota/bulletins/qb-18-118-steel-mill-articles>

² <https://www.cbp.gov/trade/quota/bulletins/qb-18-119-steel-mill-products>



requests. Those that do file may be filing requests for similar products. Requests from associations will streamline the Commerce review process and lead to a more transparent assessment of requests by Commerce staff. It will also allow Commerce to hear the voices of smaller companies who might not otherwise engage in the exclusion process. Paradoxically, the rule allows associations to object to requests. If that is the case, associations should also be allowed to make requests. More broadly, Commerce should more clearly define the term “individuals or organizations using steel in business activities.” Greater clarity here on which entities can make requests would improve the Interim Final Rule.

2. **If a product is not made in the United States or is not made in sufficient quantity or quality, Commerce must grant a broader product exclusion (not just on company by company, product by product basis).** Broader product exclusions will allow manufacturers in the United States to continue to import the product they need for their operations and investments. Small and medium-sized enterprises will be disproportionate beneficiaries of broader product exclusions, as they will not have to make product by product requests. Commerce will staff will then avoid having to take into account small variations between products in their review of requests, which will expedite their granting of broader product exclusions. Furthermore, we are concerned that Commerce staff may interpret the criteria of “not made in the United States” and “not made in sufficient quantity or quality” too broadly. A broad interpretation of these criteria could lead Commerce to negate exclusion requests if any steel or aluminum company in the United States claims it could make that product in sufficient quantity or quality.
3. **Commerce must make "national security considerations" explicitly clear to requestors.** If Commerce produces exclusion guidance without defining this term or with a vague definition, requestors will have great difficulty in providing the necessary information in their requests. Such vagueness would give Commerce significant scope to deny exclusion requests in an arbitrary and capricious manner. Smaller companies would be at a severe disadvantage in responding to this criterion. A clear, logical, and non-discriminatory definition of "national security considerations" will greatly aid the ability of requestors to participate in this process and facilitate Commerce's consideration of exclusion requests.
4. **Provide full retroactive relief for U.S. companies that successfully petition for product exclusions.** Presidential Proclamations 9710 and 9711 of March 22, 2018 provided for approved product exclusions to be retroactive. However, this relief is available only as of the date when Commerce posts the corresponding exclusion request for public comment. Forcing companies, who receive product exclusions and are importing product in a legal manner, to pay these tariffs serves no policy purpose. For anti-dumping and countervailing duty cases, Commerce provides such retroactive relief and therefore should continue with that practice for the 232 process. Without providing such relief the Trump Administration would then pose an unfair and arbitrary tax on companies that are otherwise engaging in fair trade. This injects serious uncertainty into the business environment and would prevent companies from making critical investments in the United States or hiring more U.S. workers.
5. **Product exclusions should be permanent not temporary (and on a universal basis).** Temporary exclusions would inject significant uncertainty into the business planning of



companies. Such uncertainty would only increase costs for companies as they have to alter their supply chains. It is not conducive to promoting stronger economic growth and investment in the U.S. economy.

In addition to these recommendations, we recommend that Commerce produce more detailed, statistically sound analysis of the impact of the tariffs and quotas on chemical manufacturers and downstream industries in the United States and the impact of retaliation by U.S. trading partners on costs, prices, jobs, and growth for chemical manufacturers and downstream industries.

ACC looks forward to working with Commerce staff to refine the exclusion process and mitigate the economic damage of these tariffs and quotas on the U.S. economy.

